IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:: J U D G M E N T ::

S.B. CRIMINAL APPEAL NO.181/2007
(Prithvi Raj Vs. The State of Rajasthan)

S.B. CRIMINAL APPEAL UNDER SECTION 454 Cr.P.C. AGAINST THE JUDGMENT DATED 16.12.2006 PASSED BY THE LEARNED SPECIAL JUDGE, N.D.P.S. CASES, CHITTORGARH IN SESSIONS CASE NO.47/2006 – STATE OF RAJASTHAN VS PRITHVI RAJ AND ORS.

DATE OF JUDGMENT : 10th JULY, 2007

P R E S E N T

HON'BLE MR. JUSTICE DEO NARAYAN THANVI

Mr. Manish Pitaliya for the appellant.
Mr. V.R.Mehta, Public Prosecutor.

BY THE COURT :

This appeal is directed against the order dated 16.12.2006 passed by the learned Special Judge, NDPS Cases, Chittorgarh in Sessions Case No.47/2006, whereby, the learned Judge has acquitted accused appellant Prithvi Raj of offence under Sections 8/18 and 8/25 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to the 'Act of 1985'). Accused Mansha Ram was acquitted for offence under Sections

8/18 and 8/29 and accused Bakhtawar Lal, Heera Lal, Harchandra and Bhagwan Lal have been acquitted for offence under Section 8/29 of the Act of 1985. While acquitting the accused, the learned trial Judge ordered for confiscation of the recovered opium and also the vehicle – Motorcycle No. RJ-09-6M-0564, used for carrying out the opium. The learned trial Judge also ordered that a sum of Rs.1050/- recovered from Prithvi Raj and a sum of Rs.850/- recovered from Mansha Ram be returned to them. The main ground of this appeal is that the learned trial Judge while passing the order of confiscation of the vehicle under Section 60 of the Act of 1985 has committed illegality because accused Prithvi Raj has been acquitted for offence under Sections 8/18 and 8/25 of the Act of 1985, therefore, the order of confiscation of the vehicle cannot be passed.

Learned Public Prosecutor has submitted that the learned trial Judge has given the benefit of doubt and it is obligatory on the part of the accused, who said to be the owner of the conveyance to prove that the vehicle while carrying the contraband articles was without his knowledge or connivance.

I have gone through the evidence on record. The learned trial Judge has came to the conclusion that it is doubtful as to

from which place the opium was recovered and the opium which is said to have been recovered from the place, there were no marks of recovery of opium. Section 25 of the Act provides punishment for conveyance used in commission of crime and Section 60 of the Act casts duty upon the accused to prove that the vehicle used was without his knowledge. When the trial Judge has acquitted the accused under Section 8/25 of the Act of 1985, than it was upon the trial Judge to arrive at the conclusion that before the order of confiscation of the vehicle, the vehicle was used for the commission of the offence but there is no evidence in this regard given by the learned trial Judge. Sub section 60 of the Act of 1985 provides that if the learned trial Judge is of the opinion that the vehicle has been used for carrying contraband articles, the burden of proof lies on the accused when the main offence is proved. In the absence of this, the order of confiscation of the vehicle deserves to be set aside.

Consequently, this appeal is allowed. The order of the learned trial court with regard to confiscation of the vehicle – Motorcycle No. RJ-09-6M-0564 in pursuance of Section 60 of the Act of 1985 is set aside.

(DEO NARAYAN THANVI), J.